IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 19TH JUNE 2007 / 29TH JYAISHTA 1929

OP.No. 15440 of 2002(K)

PETITIONER:

SRI.P.ARAVINDAKSHAN,
FORMER VILLAGE OFFICER,
"ASHWATHY", KOKKATTU, KAVANADU P.O.,
KOLLAM-3.

BY ADV. SRI.S.RAMESH BABU

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY THE SECRETARY, VIGILANCE DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

2. KERALA PUBLIC SERVICE COMMISSION, REPRESENTED BY THE SECRETARY, PATTOM, THIRUVANANTHAPURAM.

R1 BY GOVT PLEADER SMT.SMITHA SUKUMAR
R2 BY ADV. SRI.P.C.SASIDHARAN, SC, KPSC

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 19/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NO.26040 OF 2002 IN OP NO.15440 OF 2002 K

//DISMISSED//

19.06.2007. SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.

APPENDIX

PETIITONER'S EXHIBITS:

EXT.P1: TRUE COPY OF THE MEMO OF CHARGES TOGETHER WITH THE DETAILED STATEMENT OF ALLEGATIONS.

EXT.P2: TRUE COPY OF THE WRITTEN STATEMENT DATED 9.9.1991.

EXT.P3: TRUE COPY OF THE G.O.(MS)N0.11/2000/VIG DATED 27.1.2000.

EXT.P4: TRUE COPY OF THE G.O.(RT)NO.203/2001/VIG DATED 24.7.2001.

EXT.P5: TRUE COPY OF THE LETTER DATED 21.8.2001.

EXT.P6: TRUE COPY OF THE SHOW CAUSE NOTICE.

EXT.P7: TRUE COPY OF THE ENQUIRY REPORT OF THE VIGILANCE TRIBUNAL.

EXT.P8: TRUE COPY OF THE REPLY DATED 6.9.2001.

EXT.P9: TRUE COPY OF THE NOTICE.

EXT.P10: TRUE COPY OF THE ARGUMENT NOTE DURING THE COURSE OF HEARING ON 23.10.2001.

EXT.P11: TRUE COPY OF THE ORDER DATED 25.5.2002.

EXT.P12: TRUE COPY OF THE G.O.(P)NO.14/97/VIG DATED 25.3.1997.

/TRUE COPY/

THOTTATHIL B.RADHAKRISHNAN, J.

O.P.No.15440 OF 2002

Dated this the 19th day of June, 2007

JUDGMENT

The issue for decision in this writ petition is as to what is "hearing" in the context of an opportunity for it, before the dismissal of a Government servant.

2. On certain counts of indiscipline, the Vigilance Tribunal, as the enquiring authority, entered findings prejudicial to the petitioner. Based on that, the Government tentatively decided to dismiss the petitioner from service. Ext.P6 show cause notice was accordingly issued, calling upon him to show cause against such tentative decision of the Government. He filed Ext.P8 reply, challenging the findings of the Tribunal on the merits, the finding of guilt and the proposed punishment. By Ext.P9, the petitioner was called to appear for a personal hearing before an officer in the Government. Ext.P10 is the notes of arguments submitted by him at that hearing. What followed is the

impugned Ext.P11 Government Order, by which, the tentative decision to dismiss the petitioner from service is affirmed.

3. In support of the contentions of the petitioner, his learned counsel, relying on the decisions of the Apex Court in **Managing Director, ECIL, Hyderabad etc.** v. **B.Karunakar etc.** (AIR 1994 SC 1074) and in **State of U.P.** v. **Harendra Arora and Another** [2002(6) SCC 392], argued that the petitioner was not given an opportunity to show cause against the findings of the Vigilance Tribunal, which was the enquiring authority, before the disciplinary authority concluded against the petitioner and decided to act upon the findings of the Vigilance Tribunal to propose a tentative punishment. It is also argued that the non-granting of such an opportunity of hearing, in relation to the enquiry report, has gravely prejudiced the petitioner, which is also a plea specifically raised in the writ petition.

4. Per contra, learned Government Pleader, relying on the very same decisions of the Apex Court, canvassed that even if

there is violation of a rule of procedure in terms of Article 311, it should also be demonstrated that the procedure followed has resulted in prejudice to the delinquent and only on proof of such prejudice, would the writ court step in and interfere with the disciplinary proceedings.

5. As already noticed, the petitioner gave Ext.P8 reply to Ext.P6 show cause notice, stating his specific objections to the findings of the Tribunal. His objections were such that they ought to have been considered, to decide as to whether the disciplinary authority ought to have accepted and acted upon the enquiry report of the Vigilance Tribunal.

6. If such objections were considered after hearing the petitioner and if the administrative authority had then come to the conclusion that the enquiry report is acceptable, on a fair application of mind, which is an indispensable component in the process of hearing, the question of demonstrable prejudice being caused, may not be there and under such circumstances, the writ

court would not be justified in stepping into erase the final order of punishment, merely on the ground of absence of hearing.

7. However, advertence to the impugned Ext.P11 would show that what followed after the hearing on the basis of Ext.P9 notice is the issuance of Ext.P11, wherein, all that is stated after referring to the reply given by the petitioner is that:

> "In the reply read as tenth paper above, the Accused Officer has denied the charges. The A.O. did not raise any fresh or convincing argument for reconsideration of the provisional decision in the matter. The case has been referred to the KPSC for advice. . . . . ".

8. The Accused Officer (writ petitioner) had submitted his reply by way of Ext.P8, had also submitted Ext.P10 argument notes and had appeared in person before the designated officer, through whom, the Government offered him the opportunity of personal hearing. The impugned Ext.P11 does not disclose any consideration of the accused officer's objections and contentions in Exts.P8 and P10. Why then, was the hearing ?

9. The process of hearing, in the realm of administrative law, consists of not merely the officer carrying out the external process of sitting and apparently hearing a person, but it includes the actual listening, assimilation and reaching at the arguments advanced, which ultimately have to find reflected in the files. The application of mind to the written contentions and oral submissions, if any, at the personal hearing should find reflected in the decision. The way is, to assimilate them, to state them, to meet them, to uphold if acceptable, or to reject, if not acceptable, by stating reasons for the rejection. This is how an institutional decision making process has to work. This is all the more so because a decision of the nature of removal from service by way of dismissal or otherwise is one that could be subjected to review at the administrative realm and to judicial review and reasons are the foundations on which, a decision would stand. Even if the correctness of the reasons may not be gone into by the courts in some cases, as if they sit in appeal, the courts will always, as watch dogs of the Constitution, insist that reasons are

stated for the decision. This is because, stating reasons for a decision is itself an inbuilt requirement of the rule of fair hearing, which is one of the most essential components forming the foundation of the safeguards provided to a public servant under Article 311 of the Constitution.

10. Viewed in this angle, even if I were to accept the arguments advanced by the learned Government Pleader that the petitioner had placed his objections to the enquiry report while he filed Ext.P8 reply to Ext.P6 show cause notice, I am afraid that there is nothing in Ext.P11, which reflects the consideration of such objections. The one-line decision, which I have extracted above from Ext.P11, is wholly insufficient to be called a decision with reasons. That order does not reflect consideration of the writ petitioner's case.

11. In the aforesaid circumstances, I find no way to sustain the impugned Ext.P11. Hence the same is quashed. It is directed that the competent among the respondents will, following this

judgment, afford an opportunity to the petitioner, of being heard on his objections to the enquiry report, as also the proposed punishment and thereupon, the Government will consider his objections to the enquiry report and his contentions on the question of punishment and take a decision in accordance with law. The final decision as aforedirected shall be taken within an outer limit of four months.

The writ petition is allowed as above. No costs.

THOTTATHIL B.RADHAKRISHNAN
Judge

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

O.P.NO.15440 OF 2002 K

JUDGMENT

19TH JUNE, 2007.

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